

No. 45810-1-II  
COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

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DIVISION II  
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**TAMARA LEE,  
and  
EVA CARLETON,**

Appellants

vs

**DANIEL BUNCH,**

Respondent

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APPEAL FROM THE SUPERIOR COURT OF KITSAP COUNTY  
Docket Number 04-3-03164-2

THE HONORABLE ANNA LAURIE, Judge

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**REPLY BRIEF of Appellants**

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pm 7/27/14

**TABLE OF ADDITIONAL AUTHORITIES**  
**For Reply Brief of Appellants**

**RELEVANT ADDITIONAL STATUTORY AUTHORITY**

RCW 26.19.080, at page 1

RCW 26.23.110, at page 1

RCWA 5.44.040, at page 2

WAC 388-14A-3302 (6), at page 1

**ADDITIONAL WASHINGTON COURT RULES**

Rules of Evidence 402, at page 3

Rules of Evidence 801, at page 3

Rules of Evidence 803, at page 2

Rules of Evidence 804, at page 2,

Rules of Evidence 902, at page 2

Rules of Evidence 1006, at page 2

Rules of Evidence 1007, at page 2



1           Opposing claims that the mother must prove all care was work-related and  
2   at licensed facilities, but he is wrong and is trying to sideline the court by  
3   hammering those terms. For the first 8 months there was no requirement in the  
4   orders that childcare be only work-related or at licensed facilities. Nonetheless,  
5   the mother had testified in her deposition made on oath that childcare was work-  
6   related or legal process related and the childcare centers where the child went  
7   were licensed and known to the father. (CP 364) Opposing overlooks the direct  
8   terms of that November 2012 order which said that childcare/educational care was  
9   to be paid directly to the mother “*within 5 days*” of receipts (CP 11) and that the  
10   father simply didn’t pay.

11           Opposing still doesn’t say that Mr. Bunch paid for those childcare fees,  
12   only that they weren’t “work-related” or some other invalid excuse.

13           The mother provided extensive receipts from Department of Children’s  
14   Services and from the daycare providers and from the school proving what was  
15   charged her and paid. The lower court tossed all of the exhibits without  
16   considering their evidentiary value because the judge didn’t consider the “jurat”  
17   of the attestation clause in the motion appropriate (see main discussion in Brief of  
18   Appellants). Most of the exhibits were business receipts and valid under ER803.  
19   Other exhibits should have been allowed under ER 804(b)(3) (statements against  
20   interest), ER 1006 (summary chart as demonstrative evidence), ER 804(b)(1)  
21   (former testimony of opposing not hearsay/admission by party opponent) , ER  
22   902 & RCWA 5.44.040 (duly certified public record), ER 1007 (testimony or

1 written admission of party), ER 402 (relevant evidence generally admissible), ER  
2 801(d)(1) & (2) (not hearsay if prior statement by witness/opponent). But there  
3 was no examination of the Exhibits at all.

4       **The most confusing and questionable ruling, however, was when the**  
5 **lower court found that “No back child support, medical support, child care**  
6 **costs, educational expenses, transportation expenses, other special expenses,**  
7 **or maintenance is owed.”** If the evidentiary exhibits had been inadmissible, then  
8 on what basis was such a finding made?? There certainly was no evidence  
9 provided by opposing that he HAD paid---nor had he claimed he had paid. **Such**  
10 **a court ruling precludes the mother from ever collecting for almost a year’s**  
11 **worth of childcare and educational care and medical services that SHE paid**  
12 **for entirely!**

13       Although it is appreciated that opposing appellate attorney at least tried to  
14 run the numbers on what Mr. Bunch paid vs. what he still owed, accuracy is best  
15 reflected if we stay within the same categories and time period in contest. **Mr.**  
16 **Bunch still owes thousands for his share of childcare, educational support,**  
17 **medical services.**

18       Total amount paid by Mr. Bunch for basic child support, maintenance, several  
19 months past due when Mr. educational expenses, daycare, medical care for the period  
20 November 1, 2012 to August 31, 2013 was \$8598.08. Since the retirement subsidy was  
21 finally started and caught up by the time of hearing none of those numbers either owed or  
22 paid on the retirement payments are considered here. The fact that the retirement money

1 was started months late is a part of this action, but it was acknowledged that by the time of  
2 hearing he was mostly caught up. Otherwise, we are using the same numbers as opposing  
3 did in his Response brief: **BALANCE**

4 <b><u>TOTAL PAID BY MR. BUNCH November 1, 2012 to August 31, 2013</u></b>	=	<b>\$8598.08</b>
5 --Total Dan <u>owed</u> for BASIC CHILD SUPPORT	LESS \$5520.30	<b>3077.78</b>
6 --Dan's share <u>owed</u> for EDUCATIONAL support	LESS \$2187.49	<b>890.29</b>
7 --Total <u>owed</u> for maintenance from May 1 thru Aug, 2013	LESS \$1600.00	<b>-709.71</b>

8

9 At this point Dan is in arrears by \$709.71 and he hasn't paid a penny towards any childcare or  
10 medical care. Absolutely none of the above are in contention as to what the figures are. But  
11 Dan, his attorney, and even the trial judge seem waffled about any childcare that the child went  
12 to. There was no requirement that the childcare be work related until the final orders of May  
13 24, 2013. As a matter of fact, Tami testified in her deposition in January 2013 that all  
14 childcare WAS work-related, and legal-case related (like when she had a deposition, or had to  
15 go to court, or meet with her attorney). (CP364)

16 <b><u>to continue the calculations.....</u></b>	<b><u>BALANCE OWED</u></b>
17 --Dan's share <u>owed</u> for before & after school daycare per receipts <sup>1</sup>	LESS \$597.09 <b>-1306.80</b>
18 --Dan's share <u>owed</u> for military subsidized daycare at as per receipts <sup>2</sup>	LESS \$555.10 <b>-1861.90</b>
19 --Dan's share <u>owed</u> for medical/dental care <sup>3</sup>	LESS \$75.92 <b>-1937.82</b>
20 --Dan's share <u>owed</u> for babysitting by family/friends <sup>4</sup>	LESS \$191.88 <b>-2129.70</b>

<sup>1</sup>Childcare provided at the school the child attended was: Nov 2012 = \$180 (CP 443); Dec 2012 = \$120 (CP 4460; Jan 2013 = \$214.50 (CP 456); Feb 2013 = \$112.50 (CP 463); March 2013 = \$81.50 (CP 470); April 2013 = \$57 (CP 476). Dan's 78% share was \$597.09.

<sup>2</sup> Subsidized childcare provided by military certified and licensed daycare center: Nov 2012 = \$45 (CP 441); Dec 2012 = \$135 (CP 447-8); Jan 2013 = \$90 (CP 458); Feb 2013 = 0; March 2013 = \$45 (CP 472); April 2013 = 0; May 2013 = \$90 (CP 479); June 2013 = \$180 (CP 485 & 544); July 2013 = \$225 (CP 544); August 2013 = \$100 (CP 544) Dan's 78% of Nov to Apr costs is \$245.70 and for May thru Aug Dan's 52% is \$309.40 for total in this category of \$555.10 owed.

<sup>3</sup> Medical care was \$128 in June 2013 (CP 487) (Dan's share @52% = \$66.56) and \$12 in March 2013 (CP471) (Dan's share @78% = \$9.36) (Tami paid this bill cause Dan no longer at address. It was Tami's check noted on receipt! Look at check numbers.) Dan's share totals \$75.92

<sup>4</sup> Dan was out of the country and saw little of the child up until late February when he quit his job and has remained not working. Tami utilized family to babysit and paid them the least of

1

2           The business receipts from the school where the child attended after-  
3 school care clearly show when the child attended and what the cost was (see  
4 footnote 1 below). It is easy to calculate Mr. Bunch's share of the childcare cost:  
5 Dan's 78% share for that cost from November until May was \$597.09. There is  
6 nothing "confusing" about those documents. Business documents are not hearsay.  
7 Obviously, a grade school is a licensed facility (but that wasn't a requirement  
8 until the May 24 Orders anyway!). The child has been going to this grade school  
9 (which also has pre-K programs) for three years now, well before the marriage  
10 ended. Mr. Bunch chose that school. The childcare receipts from the school  
11 daycare are clearly marked on school letterhead and note dates and times and  
12 costs<sup>5</sup>. Those receipts were provided to Dan each month, yet he paid none of it  
13 despite the November 2012 orders. Those receipts are clear "evidence" as  
14 business records, and are not hearsay and should have been admissible  
15 documents. (ER 803)

16           Dan was very aware of the other MILITARY licensed care facilities the  
17 child went to for before-school care or when there was no school. His argument  
18 is specious saying that the child wouldn't have had to go to childcare if he had  
19 had "right of first refusal" as that parenting plan didn't go into effect until the end

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everyone at \$3/hr. There was no requirement that the babysitter had to be a licensed facility at the time. Pam Lee was paid \$123 in Jan 2013 (CP 457-8) and \$123 in Feb 2013 (CP 464). Dan's share = \$191.88.

<sup>5</sup> Childcare provided at the school the child attended was: Nov 2012 = \$180 (CP 443); Dec 2012 = \$120 (CP 446); Jan 2013 = \$214.50 (CP 456); Feb 2013 = \$112.50 (CP 463); March 2013 = \$81.50 (CP 470); April 2013 = \$57 (CP 476). Dan's 78% share was \$597.09.

1 of February and it was impossible to offer him that rare option if Tami was called  
2 in early to work and had to be there within 30 minutes when Dan lived an hour  
3 away. It made more sense not to subject the child to two hours of a car ride going  
4 to Dan's house (Dan had moved an hour away from where the child had always  
5 lived), just because the child had to go to daycare 20 minutes earlier than usual.  
6 Such a possibility was rare and Tami's early working hours were temporary .

7 Even if that possibility had been exercised the cost for that childcare  
8 would still have been constant. The cost of that military before-school care was  
9 \$45 a week. The cost for that was the same whether the child went once a week  
10 or five days a week, stayed a couple hours a day or stayed all day. Tami testified  
11 to that under oath at her deposition in January (CP 364). It was a subsidized rate  
12 that the State of Washington or governmental agency paid the lion's share of.  
13 (see, CP 544 for DCS verification). The \$45 a week was Tami's share and was  
14 known well ahead of time and Tami paid ahead of time when she had the money.  
15 The receipts show payment dates and amounts<sup>6</sup> and not billing amounts. (see, CP  
16 544 for DCS verification form showing amounts Tami paid in June, July, and  
17 August of 2013) It has been explained several times to Dan that the cost of that  
18 care was the same each week and didn't depend on how many hours the child  
19 went or whether Dan watched the child one day or not. The cost was the same.  
20 When there was a reimbursement, it was when Tami had already paid and the

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<sup>6</sup> Private, subsidized childcare was: Nov 2012 = \$45 (CP 441); Dec 2012 = \$135 (CP 447&8); Jan 2013 = \$90 (CP 458); Feb 2013 = 0; March 2013 = \$45 (CP 472); April 2013 = 0; May 2013 = \$90 (CP 479); June 2013 = \$171 (CP 485); July 2013 = \$180 (CP 491); August 2013 = \$45 (CP 494)



1 center was closed due to illness and hence she was reimbursed<sup>7</sup>. It is true that the  
2 receipts provided by the private military daycare person aren't on business  
3 letterhead, but is nonetheless the signed receipt from that provider; they are the  
4 same receipts as Dan had been getting for months before, but started objecting to  
5 in this motion process. Dan himself provided attendance records from that  
6 provider showing the child went to daycare there (CP357+.) The Department of  
7 Child Services business form at CP 544 shows the amounts paid in  
8 June/July/August (signed under penalty of perjury by both provider and mother).  
9 That form should be clearly admissible as a business document and "evidence."  
10 (ER 803)

11 Dan's own DCS records (CP 356 ) frequently show how Dan is in  
12 contempt of court orders requiring him to pay by the 5<sup>th</sup> of each month. And  
13 sometimes he pays short. By the time Tami gets the money it is several days later.  
14 What is most obvious by Dan's own DCS record is how there is only payment for  
15 the "basic child support" amount (\$720.04 from November 2012 to May 2013)  
16 and then for the combined basic child support amount plus the maintenance  
17 amount (\$300 basic child support and \$400 maintenance for May to August  
18 2013). On the DCS records, there is no money going to pay for the educational  
19 support (kindergarten tuition of \$420) each month, nor for any of the daycare  
20 (military daycare or pre-post school daycare).

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<sup>7</sup> Tami paid in cash at times and doesn't even have each receipt as it is.

1 Dan was supposed to be paying his share for childcare, too, as per the  
2 November 2012 as well as the May 2013 child support orders. Dan knew the  
3 child was going to daycare. He received those receipts and he got his own copies  
4 directly, too (CP 358+). He got monthly receipts from Tami (see month-to-month  
5 receipts and records in the Exhibits starting with November 2012 at CP 439 thru  
6 August 2013 at CP 492+). But he paid none of it.

7 The November 2012 orders stated that: Tami was to provide receipts to  
8 Dan “who shall pay his share within 5 days of receipt.....Payments shall be  
9 made separate from the support payment herein.” (CP 11) Those payments were  
10 to “be made to the parent receiving the transfer payment.” (CP 6) Those orders  
11 were in effect from November 2012 until the new orders of May 24, 2013. There  
12 was no requirement that the child go to only certain providers; there was no  
13 requirement that the childcare be only work-related<sup>8</sup>. Dan was to pay Tami  
14 “separately from the [basic] support payment “ each month “within 5 days.”  
15 (November 2012 orders at CP11) Never happened. Not once. Letter after letter  
16 was written begging to resolve the back childcare matter (CP 521 – 537), until  
17 Tami’s attorney was told to “refrain from sending e-mails or letters...and do not  
18 show up at my [opposing attorney’s] office.” (CP 522). Early on in January 2013,  
19 there was one month when a junior attorney actually attempted to make  
20 payment...but only the one month (CP 531- 537).

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<sup>8</sup> However, Tami testified under oath at her January 2013 deposition that childcare was all work-related, plus when she had to go to court or had legal hearings or meetings with her lawyer. CP 364..

1           In addition, ,Dan was in arrears for not paying Tami's share of retirement  
2 money. He didn't even start paying until he knew the Motion was to be filed (late  
3 August) despite being ordered after trial in April to pay as of May and then  
4 ordered again at reconsideration trying to delay those payments to pay as of May.  
5 Twice he was clearly ordered by Judge Hull to start paying. There was letter after  
6 letter requesting payments to start, but all ignored until the contempt filing when  
7 suddenly he paid up on the retirement monies owed. It WAS an arrearage and it  
8 WAS CONTEMPT when Dan refused to start those payments despite TWO court  
9 orders to pay as of May 1! (see initial court order at CP 75 and reconsideration at  
10 CP 18 and 41) When Tami was bringing home \$1100 to \$1200 a month, that  
11 extra \$389 was important just to pay the utilities, not to mention the childcare that  
12 Tami was fronting and paying for since Dan wasn't reimbursing any of it! Just  
13 because it was not further explored at hearing, there was no acquiescence to drop  
14 that matter from the Motion. Dan didn't pay despite two clear orders and multiple  
15 letters; he only paid after the motion was filed and even then, the amount was a  
16 few dollars off. The motion was not frivolous and was at least successful in  
17 getting the retirement payments started!

18           Appellants are fully aware that a contempt finding is in the sound  
19 discretion of the trial court and is rarely overturned. Nonetheless, clear non-  
20 payment for months is defying court orders and defying court orders when there is  
21 an ability to pay (declared at CP 612), is contempt whether the lower court

1 choses to sanction it or not. There was a willful refusal to comply with court  
2 orders by Dan<sup>9</sup>. RCW 7.21.010.

3  
4 **Our primary argument on appeal isn't even regarding the lack of a**  
5 **contempt finding, but rather it is the finding that not only is there no**  
6 **contempt found, but a further finding that all monies are paid (CP 612), all**  
7 **prior court orders were followed (CP 611), and no monies are owed (CP 612).**  
8 **That is simply not true and totally unsupported by the facts and evidence**  
9 **before the lower court judge.** First of all it is not supported by the "evidence"  
10 found in the Exhibits if the Exhibits had even been looked at. **But even if the**  
11 **appellate court also finds the exhibits inadmissible, nonetheless and**  
12 **especially then, there is no evidence in support of a finding that no monies**  
13 **are owed either.** How can a court possibly come to such a conclusion? There  
14 were no facts to support such a finding. Dan's own DCS exhibit at CP 359 shows  
15 he only paid the basic support amount and NO childcare. There wasn't a claim by  
16 Dan that he had paid for all childcare. Even opposing in his "Response" brief to  
17 this appellate court states that, "at best , there were material disputes about  
18 whether Ms. Lee was entitled to reimbursement for any daycare expenses." There  
19 WERE daycare expenses; this was a 4 year old child with a working mother. A

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<sup>9</sup> When a man doesn't pay as ordered by the trial court and goes to the court to ask to have payments reduced or at least postponed for 8 months and the court again orders him to start paying but he still doesn't pay despite having the means to pay, that is a "willful refusal" to comply. Mr. Bunch only started paying the retirement money after this motion was filed and only even tried to pay for childcare one month in January 2013. See discussions above.

1 court shouldn't be able to come to conclusions that there were no expenses and no  
2 support owed. Such a finding is simply not supported by facts. This matter at  
3 worst should have been stricken due to procedural irregularities, allowing it to be  
4 re-brought another day, if necessary. It is simply against public policy to allow a  
5 father to get away with not paying anything toward his child's daycare costs.  
6 There was NO REQUIREMENT that the childcare be only work-related until the  
7 end of May --- but, in fact, the mother had testified in her deposition made under  
8 oath that the childcare was work-related. The amount of the educational expense  
9 was undisputed and the father paid nothing despite the court order to pay his  
10 share.

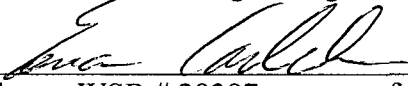
11         The mother's household has lived on hundreds of dollars less each month  
12 because of this unlawful behavior of the father and the court should not punish the  
13 mother and child, and allow such behavior to continue. It was totally impossible  
14 to sit down to talk to the father through his attorneys. Letter after letter requesting  
15 a conference went ignored until we were told to not to even e-mail, write letters,  
16 or go to opposing's offices (see, CP 521+ for letters and e-mails begging to go  
17 over the materials). It was absolutely necessary to file a motion to direct the  
18 father's attention to the monies he owed. It seemed to have worked to get him  
19 started paying the retirement stipend to the mother, but without sitting down or  
20 getting any sort of response regarding the owed daycare, the motion with its  
21 exhibits was presented. It is a muddled matter because it went on so long. But it

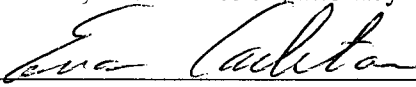
1 went on so long in an effort to avoid going back to court because of the constant  
2 CR11 sanctions threat opposing brought with each and every motion.

3 **Bottom line: public policy should not allow the father not to pay his**  
4 **share of childcare. He was fully aware his wife worked; he was fully aware**  
5 **the child went to daycare and where; he had been told it was always work-**  
6 **related or legal related; he knew they were licensed facilities; he should not**  
7 **be allowed to go without paying his share of that cost. And the lower court**  
8 **had absolutely no basis in facts to rule that all daycare/educational expenses,**  
9 **etc., had been paid and/or nothing was owed.**

10 Cr 11 sanctions are totally unwarranted and appellants arguments already  
11 made in their Brief are reiterated here.

12  
13 Respectfully submitted this 26<sup>th</sup> of August, 2014, and sworn to as true and  
14 accurate to the best of my information and knowledge. Subject to the perjury  
15 laws of the State of Washington, signed in Spokane, Washington.

16   
17 Eva Carleton, WSB # 28387, attorney for Tami Lee

18   
19  
20 Eva Carleton, WSB #28387, as pro se Appellant  
21

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury that I did mail on August 27 or earlier, a true copy of this document, Appellants' REPLY Brief and all attachments to the opposing party's last known attorney of record at his last known and designated address via U. S. Priority Mail:

Douglas N. Kiger, Attorney  
4717 South 19<sup>th</sup> St., Ste 109  
Tacoma, WA 98405

Signed this 26<sup>th</sup> day of August, 2014, in Spokane, WA



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